IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1084 OF 2007

in

APPEAL (LODGING) NO. 82 OF 2007

IN

CHAMBER SUMMONS NO. 161 OF 2006

IN

SUIT NO. 4193 OF 2000

Majid Oomerbhoy .. Appellant
(Org. Plaintiff)

Versus

Rashid Sattar Oomerbhoy &Ors. ... Respondents
(Org. Defendants)

And

The Court Receiver, High Court,
Bombay. ... Respondent

Mr. J.P.Sen i/b. Thakore Jariwala & Associats for the appellant.
Mr. Mukul Tally i/b. S. Mohamedbhai & Co. for Respondents Nos. 2, 3 & 4.
Ms. Kiran i/b. S.K.Srivastava & Co. for Respondent No.1.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.

DATE : 1st August, 2007.

P.C.

1. Assuming that there is sufficient cause shown for condonatin of delay in filing the appeal, we heard learned Counsel for the appellant on merit.

2. In the Appeal, the order dated 15th September, 2006 passed in Chamber Summons No.161 of 2006 is challenged. Chamber Summons No.161 of 2006 was taken out by the present appellant. The prayer made in the Chamber Summons was that the order dated 26th October 2005 passed by the Court Receiver fixing royalty at the rate of Rs.1,76,733/- per month be modified.

3. Perusal of the order, however, shows that the learned Single Judge has nowhere directed either setting aside of that order or modification of that order. All that is done by the learned Single Judge is that he directed the Court Receiver to consider the material produced by the parties and to refix the royalty, if necessary. Thus, we find that there is no order made against the plaintiff by the learned Single Judge. Even assuming that by that order the learned Single Judge rejected the Chamber Summons taken out bythe plaintiff, the order of the learned Single Judge does not decide any issue finally and, therefore, in view of the

Judgment of the Supreme Court in the case of **Shah Babulal Khimji vs. Jayaben D. Kania & Another,** reported in (1981) 4 SCC 8, the order does not amount to a judgment for the purpose of Clause 15 of the Letters Patent of the Bombay High Court. The Appeal therefore is not maintainable.

The Motion and the Appeal are disposed of.

(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)